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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/687,036
Filing Date: October 16, 2003
Appellant(s): JALKANEN ET AL.

Andrew T. Spence
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 13, 2007 appealing from the Office action mailed August 21, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

This appeal involves claims 1, 2, 4, 11, 12, 14-16, 18, 25, 26, 29, 30, 32, 39, and 40.

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Sepanaho (2002/0022961), filed August 14, 2001.

Cremon et al (2002/0191998), filed December 19, 2002.

Harumoto (2004/0203413), filed February 6, 2003.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 11, 12, 14-16, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Sepanaho (2002/0022961).

In regards to claims 1, 2, 11, 14-16, 29, and 30, Sepanaho teaches a short-range radio transmitter, which establishes a link to a portable digital user device, within a predetermined distance, and transmits a universal resource locator (URL) to the user device. (Abstract).

The radio transmitter utilizes a short range radio frequency device placed in a specific location to provide the user of a hand-held unit, such as a digital mobile phone, personal digital assistant or a portable computer, with information relevant to the user's specific location. (Paragraph 0016).

Sepanaho discloses using an RF link between a programmable transmitter and a portable digital user device, such as a portable computer, digital mobile phone or a personal digital assistant. As described above, a URL is transmitted from the transmitter to the user device. The transmission of the URL will cause the execution of a software program on the user device. This software program will in turn launch the

appropriate software program, such as an Internet browser or micro browser, and pass the URL so that the appropriate information may be loaded from that URL through another RF link, such as a digital mobile telephone network. (Paragraph 0017).

Paragraph 0002 of Sepanaho clearly discloses both receiving information over an air interface and determining whether the terminal is actively operating an application. Paragraph 0002 recites, "the present invention relates generally to apparatus and methods utilizing a radio frequency (RF) link between a preprogrammed transmitter and a portable digital device (user devices), such as a portable computer, digital mobile phone or personal digital assistant. A universal resource locator (URL) is transmitted to such a user device. The transmission of the URL causes an appropriate software program to be executed on the user device. This software program will in turn launch the appropriate software program, such as an Internet Browser or Micro Browser, and pass or transmit the URL so that the appropriate information may be loaded from that URL through another RF link, such as a digital mobile telephone network." Clearly, an RF link is received over an air interface. As explained in paragraph 0002, if it is determined whether the terminal is actively operating an application (includes the appropriate software program, such as an Internet Browser), a predefined action is performed (the URL is transmitted).

Sepanaho teaches the following in regards to claim 12:

Figure 2 shows the components of the URL broadcast device (signaling tag). As shown the figure the signaling tag includes a transceiver.

As shown in figure 3, the signaling tag scans and searches for a user device. Once the device is found a connection is made and the URL is sent to the user's device.

"The radio transceiver module (22) may include any industry standard digital transmission protocol such as BluetoothTM. (Motorola, Inc.), IEEE 802.11 b (The Institute of Electrical and Electronics Engineers), or similar, and is connected to an antenna (21). The "Bluetooth" protocol defines a universal radio interface in the 2.45 GHz frequency band that enables wireless electronic devices to connect and communicate wirelessly via short-range, ad hoc networks." (Paragraph 0025).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 18, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sepanaho (2002/0022961) in view of Cremon et al (2002/0191998).

Sepanaho's teachings are discussed above. Sepanaho's teachings however fail to disclose writing data to the signaling tag or in other words the signaling tag receiving data.

Cremon et al teach the following in regards to claims 4, 18, and 32:

"Software programmable products, for example, cellular telephones and wireless enabled data or computer devices have receiver/transmitter circuitry that could be adapted to read and/or encode RFID's. The present invention may use this circuitry to

read and or write to the reconfiguration data on an RF tag, or receive RF data directly into the product's circuitry via an onboard RFID circuit.” (Paragraph 0020).

In view of Cremon et al's teachings, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to allow data communication both to and from the RFID tag as taught by Cremon et al. Sepanaho teaches communication between the signaling tag and the user's device. One would be motivated to permit communication back to the signaling device in order to perhaps ask the signaling device for additional information or communicate that the data transmitted from the tag to the user device was faulty and to resend the data.

Claims 25, 26, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sepanaho (2002/0022961) in view of Harumoto (2004/0203413).

Sepanaho's teachings are discussed above. These teaching include teachings in regards to claims 26-28, 40, and 41. Sepanaho's teachings however fail to disclose the controller being capable of selecting a signaling tag before receiving information regarding the signaling tag.

Harumoto teaches the following in regards to claims 25, 26, 39, and 40:

“The password and the system ID are data for confirming that the wireless communication tag 72 is a wireless communication tag 72 which is allowed to exchange information with the wireless communication device 130.” (Paragraph 0069).

In view of Harumoto's teachings, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to offer the user the choice of accepting the data communicated from the signaling device as taught by Harumoto.

One would be motivated to allow owners of mobile devices the option of preventing certain information to be communicated to his or her device.

(10) Response to Argument

Appellants' arguments begin on page 3 of brief.

Appellants' initial argument (see page 4 of brief) states that Sepanaho does not teach or suggest determining whether the terminal is actively operating an application, or performing a predefined action based upon the application and the state of the application if the terminal is actively operating an application. The examiner however respectfully disagrees. In Sepanaho's teachings (see paragraph 0017), a user device (claimed terminal) receives an RF transmission from a programmable transmitter (claimed signaling tag). The RF transmission sent by the signaling tag includes a universal resource locator (URL). If the user device has access to the Internet (see following paragraph), the transmission of the URL will cause the execution of a software program on the user device and the software program in turn will launch the appropriate software program, such as an Internet browser where the appropriate information may be loaded from that URL (see Sepanaho's paragraph 0002). The software contained on the user device used to launch Internet browser is considered to be the actively operating application. It must be determined that the user device includes this actively operating software application in order to ensure that the URL can be launched in the user device. The launching of the URL is considered to be the predefined action based upon the application and state of the application.

As is explained in paragraph 0023, the URL broadcast device (broadcasted from the signaling device) consists of a non-volatile random access memory unit (24) that is preprogrammed with a URL, a universal resource identifier (URI), or a string, such as an Internet protocol (IP) address, that will allow any user device with a connection to the Internet to access the relevant information. Because the URL can only be launched by user devices which include access to the Internet and as is taught in paragraph 0017, the invention is not limited to any particular user device, it is clear that a determination must be made that the user device includes the necessary Internet access in order to perform a predefined action (launching of a website). With regards to Sepanaho's teaching that the invention is not limited to any particular user device, paragraph 0017 specifically teaches that the, "systems, methods, programs, and processes described in relation to the present invention are not limited to any particular user device." This teaching reinforces that the various user devices in the proximity of the transmitter may or may not include the application which allows Internet access and therefore a determination must first be made that the user device includes the necessary software application in order to ensure compatibility between the transmitter and the user device and to further ensure that the URL will be launched in the user device.

Appellants further argue (see page 6 of brief) that under no reasonable interpretation does determining whether a device is actively operating an application correspond to determining whether the device includes that application. The interpretation of actively operating an application recited by the appellants includes not

only the device including the application, but also executing one or more instructions with respect to that application. Examiner however respectfully disagrees with appellants' stated interpretation of actively operating an application. As is explained above, the software contained on Sepanaho's user device, used to launch an Internet browser is considered to be the actively operating application. Clearly it must be determined that the user device includes the necessary software and such software must be actively operating on the user device for a connection to the Internet to be achieved. If no such software is present on the user device or if the software is inactive, a connection to the Internet cannot be made. Therefore it is clear that the software for connecting or accessing the Internet must be actively operating in order to link to the Internet.

Appellants argue that nowhere does Sepanaho teach or suggest that the device performs a step of determining whether it includes an application for receiving the URL or determining whether the device includes an appropriate software program. It is argued further that it does not make sense that the device would determine whether the device includes the software programs, since each device is known to include such software. In response to this argument, as is discussed above and in paragraph 0017 of Sepanaho, the user device is not limited to any particular device and therefore it would not be known that each device includes such software as is believed by appellants. Because potentially any user device could be compatible with the signaling tag, a determination would have to be made regarding whether the device includes the appropriate software or not. Secondly claim 1 does not disclose the device performing

the step of determining whether it includes an application for receiving the URL or determining whether it includes an appropriate software program. Claim 1 specifically recites, "determining whether the terminal is actively operating an application". Based on the claim language it only has to be determined whether the terminal is actively operating an application. It is not specified how the determination is made or what device (i.e., the terminal or the signaling tag) makes the determination. Sepanaho teaches transmitting a URL to user devices. The transmitter seeks out compatible user devices (step 31 of figure 3). If the device is compatible (actively operating an application) the browser will be launched. If the device does not include the appropriate software, the browser will not be launched. Therefore Sepanaho clearly teaches determining whether the device is or is not actively operating an application.

Appellants state that by dependency alone claims 2-14 are patentably distinct from the system and method of Sepanaho.

Appellants discuss claims 4, 18, and 32 and argue on page 7 that one skilled in the art would not have been motivated to modify the Sepanaho system to include the alleged feature of the Cremon system. Specifically, appellants state that since the Sepanaho system is already configured to receive a URL from the radio transmitter, Sepanaho would not require communication back to the transmitter for receiving additional information. However it is suggested by Sepanaho in paragraph 0030 that a user/customer can selectively or automatically receive information about products and services offered in proximity of the transmitter. If the user device is in the selective mode, the user would have to request data from the signaling tag in order to obtain

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further information. Therefore although the specific teaching of writing data to the signaling tag is not taught by Sepanaho, the motivation to communicate back to the signaling tag is clearly disclosed. The specific teaching of writing data to a signaling tag is taught by Cremon.

Appellants submit that claims 15 and 29 recite subject matter subject matter similar to that of independent claim 1. Appellants do not include specific arguments for claims 16-28 and 30-41, however state that claims 16-28 and 30-41 are patentably distinct from Sepanaho for the same reasons given with respect to independent claim 1.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Art Unit 2876
April 7, 2008

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